1.S.B. CIVIL WRIT PETITION NO.334/2004
Tulchhi Vs. Smt. Maphia & ors.

2.S.B. CIVIL WRIT PETITION NO.335/2004
Tulchhi Vs. Smt. Maphia & ors.

Date : 6.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. JK Bhaiya, for the petitioner.

Mr. Vineet Jain, for the respondents.

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Heard learned counsel for the parties.

These two writ petitions are directed against two separate orders dated 28.4.2003 whereby the trial court rejected applications for amendment filed in two separate suits viz., one is a suit for specific performance of contract dated 28.2.1985 and another suit was filed for recovery of Rs.30,000/- alleged to be paid by the plaintiff to the defendant on 28.2.1985 for which a pronote and receipt was executed by the defendant.

By amendment, the petitioner wanted to plead that she came to know in the year 2002 that one power of attorney was executed in favour of Fakrudin by Khaju Khan – ancestor of defendant and after going through the contents of power of attorney, the plaintiff came to know that there is a mention of receipt of Rs.30,000/- and there is further mention of need of Rs.2,000/- of the seller of property

and, therefore, the petitioner wants to plead that said Khaju Khan received Rs.2,000/- in continuation of agreement of sale of house and thereby the suit of the plaintiff will come within limitation.

The said amendment applications were rejected by the trial court on the ground that the story set up by the petitioner is not believable as well as the petitioner submitted application after inordinate delay.

Learned counsel for the petitioner submitted that the petitioner is an old lady and was not understanding all things. She was not having knowledge of the power of attorney which was executed in the year 1988 and, therefore, she could not plead the grounds. It is also submitted that only on the ground of delay, the application should not have been rejected by the trial court.

I have considered the submissions of learned counsel for the parties and perused the reasons given by the trial court.

It appears that the trial court very carefully narrated and examined the facts of the case and rejected the petitioner's applications as the applications were filed by the petitioner/plaintiff after inordinate delay and this Court after going through all the facts, is of the opinion that the story appears to have been concocted only to withdraw the admission made in the plaint.

In the facts of the case, I do not find that the trial court has committed any illegality in passing the impugned orders so as to call for interference in the same under writ jurisdiction.

Accordingly, I do not find any merit in these writ petitions and the same are hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya